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In the High Court of Judicature for Rajasthan

At

Jaipur Bench, Jaipur

O R D E R

In

S.B. Criminal Revision Petition No.476/2007
Alok Kumar Vs. The State of Rajasthan and others

Date Of Order :: 30.11.2007

P R E S E N T

Hon'ble Mr. Justice Jitendra Ray Goyal

Mr. V.R. Bajwa, for complainant-petitioner.
Mr. S.K. Jain, for non-petitioners No.2 to 5.
Mr. K.A. Khan on behalf of
Mr. D.S. Shekhawat, for non-petitioners No.6 & 7.
Mr. Ashwani Sharma, Public Prosecutor for State.

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By the Court :-

The complainant-petitioner Alok Kumar has filed this revision petition under section 397 read with 401 of the Code of Criminal Procedure against the order dated 9/4/2007 passed by Additional Sessions Judge (Fast Track), Chomu, District Jaipur in Sessions Case No.8/2007 whereby accused respondents have been discharged from the offence punishable under section 308 IPC and the case was

(2)

remitted under section 228 of the Code of Criminal Procedure in the court of Additional Chief Judicial Magistrate, Chomu for trial after framing the charges under sections 147, 148, 452, 427, 341, 323 and 325 read with 149 IPC.

2. According to the prosecution case, on 24/10/2006 at about 2:30 am accused respondents entered in the plot of the complainant, situated at No.21, Guru Dev Vihar where the construction work was in progress, and caused the injuries to twelve persons of the complainant party.

3. Heard learned counsel for the complainant-petitioner as well as accused non-petitioners and Public Prosecutor for the State and perused the material placed during the course of arguments.

4. It was inter alia contended that for constitution of the offence under section 308 IPC it is not necessary that actually such injury has been caused which endangers the life of the victim but only requirement is that injury was caused with such

(3)

intention or knowledge and under such circumstances if one by that act caused death he would be guilty of culpable homicide not amounting to murder. Reliance was placed on Sunil Kumar Vs. N.C.T. Of Delhi and others, reported in (1998) 8 Supreme Court Cases 557 and Sehdeo Vs. State of Rajasthan & Ors., reported in 2003(2) Cr.L.R. (Raj.) 1408. It was then contended that in the instant case accused respondents came in the house having lethal weapons in their hands and caused injuries to many persons of the complainant party in which Hari Narayan sustained five fractures in his hand and leg likewise Babu Lal, Vimla and Hari Narayan, each of them, sustained one grievous hurt and two other injured persons received simple injuries.

5. Learned counsels appearing for accused non-petitioners contended that all the injuries received by the injured persons were not on any vital part of their body, therefore it is very clear that accused persons were not having any intention or knowledge to cause any fatal injury. Therefore, the

(4)

trial court rightly observed that prima facie no case is made out for framing the charge under section 308 IPC.

6. I have considered the rival submissions made at the bar. It is settled proposition of law which is also held by Hon'ble the Apex Court in Sunil Kumar's case (supra) that, to postulate an offence under section 308 IPC it is only required that act or injury was caused with such intention or knowledge and under such circumstances that if one by that act caused death he would be guilty of culpable homicide not amounting to murder. It is not necessary that an attempt of that nature may actually result in such hurt which endangers the life of the victim. In Sehdeo's case (supra) the coordinate bench of this Court has observed that merely because the doctor has not opined as to whether the injuries sustained by the injured were sufficient in the ordinary course of nature to cause death, it would not be proper to discharge the accused from the charge under section 307 IPC. Hon'ble the Apex Court in State of

(5)

Maharashtra Vs. Balram Boma Patil & Ors., reported in AIR 1983 SC 305 observed that "to justify the conviction under section 307 IPC, it is not essential that the bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often given considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds." In the instant case, none of the injured sustained any injury on their vital part of the body and all the injuries were inflicted on the non-vital part like tibia fibula and leg, though Babu Lal received one clavicle bone fracture but according to the doctor that injury was not capable of endangering ones life. Therefore, in the absence of any other material the trial court keeping in view the medical report, nature of the injuries and the part chosen by the accused persons for inflicting the injuries arrived at the conclusion that prima facie

(6)

no case is made out against the accused persons for the offence under section 308 IPC. I do not find any illegality or perversity in the impugned order.

7. Consequently, this revision petition is hereby dismissed.

(J.R. Goyal), J.

**VS Shekhawat/-
Jr.P.A.**